

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Commission Seeks Comment on Petition)
For Declaratory Ruling Regarding Whether)
Certain CMRS Practices Violate the)
Communications Act)

WT Docket No. 00-164

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the September 20, 2000 Public Notice of the Federal Communications Commission ("Commission"),¹ Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the issues raised therein by the Wireless Telecommunications Bureau ("Bureau"). Each of the practices referenced by the Bureau are just and reasonable under Section 201(b) of the Communications Act of 1934, as amended ("Communications Act"), particularly when viewed in light of the competitiveness of the Commercial Mobile Radio Services ("CMRS") industry.

II. BACKGROUND

In 1993, Congress amended the Communications Act by adding a new classification of telecommunications provider, the CMRS licensee.² At that time "Congress established the promotion of competition as a

¹ Public Notice, "Commission Seeks Comment on Petition for a Declaratory Ruling Regarding Whether Certain CMRS Practices Violate the Communications Act," DA 00-2083, released September 20, 2000 ("Public Notice").

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993).

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fundamental goal for CMRS policy formation and regulation.”³ As the Commission more recently stated: “as a matter of Congressional and Commission policy, there is a ‘general preference that the CMRS industry be governed by the competitive forces of the marketplace, rather than by governmental regulation. . . .’”⁴

The result of the Commission’s competition-based regulatory framework has been a telecommunications industry sector that Chairman William E. Kennard has deemed the “poster child for competition.”⁵ The CMRS industry in 2000 continues to experience falling prices, increasing service options, and growing subscriber numbers.⁶ Since 1998, prices for mobile telephone service have fallen by as much as 20 percent.⁷ An increasing number of carriers are implementing digital technologies, thus offering users enhanced privacy and service options, and are expanding their system footprints into additional markets.⁸ By August of 2000, in fact, 88 percent of the U.S. population (222 million people) had at least three

³ Fifth Report on Competition, FCC 00-289, released August 18, 2000 (“Fifth Report on Competition”) at page 1.

⁴ Memorandum Opinion and Order, FCC 99-356, released November 24, 1999 (“SBMS Order”) at para. 9. *See also* Third Report and Order, 9 FCCRcd 7988 (1994) at para. 1 (The Commission’s actions are intended to “ensure that customer demand, not regulatory decree, dictates the course of the mobile services marketplace.”).

⁵ Speech of Chairman William E. Kennard, CTIA Convention, New Orleans, LA, February 9, 1999, “Crossing Into the Wireless Century,” at p. 2.

⁶ Fifth Report on Competition at p. 4.

⁷ *Id.* at p. 5.

⁸ *Id.*

different service providers offering service in their communities, while 69 percent of the population had five or more CMRS service alternatives.⁹

This growing competition requires carriers to differentiate themselves on prices, terms and conditions of service, rate plan options, customer care, service alternatives and other aspects of their wireless service. Nextel, for example, differentiates its product from those of its competitors by offering a combination push-to-talk digital dispatch service (known as Direct Connectsm) and mobile telephone service in a single handset. Additionally, Nextel has and continues to differentiate its pricing plans by rounding to the nearest second after the first minute of the call.¹⁰

Unlike the marketplace that historically has existed in the Local Exchange Carrier ("LEC") market, the competitiveness of the CMRS marketplace allows consumers, such as the Petitioners herein,¹¹ to choose between as many as seven wireless service providers. Thus, if a customer is dissatisfied with the pricing and billing practices of its current wireless provider, that customer has the option to change to a carrier that offers terms and conditions of service that are suitable to his or her needs. The existence of these competitive options and the associated ability to move to another provider's service protects consumers from unjust and unreasonable

⁹ *Id.*

¹⁰ See www.nextel.com. The Commission highlighted this Nextel marketing differentiator in its 1998 Third Annual Report on CMRS Competition. Third Report, FCC 98-91, released June 11, 1998 at para. 36.

¹¹ Petitioners are the plaintiffs in *White v. GTE*, a class action lawsuit in the State of Florida. See Public Notice at p. 1.

practices. The billing and pricing practices addressed in the Public Notice, therefore, are marketing and competitive differentiators among carriers, and are not the sort of actions that should be “regulated” by the Commission. For these reasons, and as discussed more fully below, Nextel respectfully requests that the Commission dismiss the Petition.

III. DISCUSSION

In the Public Notice, the Commission queries “whether the following practices are unjust and unreasonable practices under Section 201(b) of the Communications Act: (1) charging customers for dead time;¹² (2) charging for unanswered or unconnected calls; (3) measuring the time of a call from the time the “send” button (or other similar button) is pushed; and, (4) the practice of rounding up any of the foregoing types of charges to the next minute.”¹³ Nextel asserts that each of the billing and pricing practices are just and reasonable, particularly in a competitive – rather than a monopoly – marketplace. Competition among the carriers, rather than Commission or regulatory fiat, should determine whether these practices are used in the CMRS marketplace.

Unanswered/Unconnected Calls. The practice of billing for mobile phone calls that ultimately are not answered by the called party is just and

¹² Nextel does not believe it can adequately address this issue because the Commission has neither provided a definition of “dead time” nor adequately explained to what portion of the mobile telephone call it is referring. It is not clear from the Public Notice or the underlying Petition how “dead time” would be distinguishable from either unanswered/unconnected calls or calls that are billed from the moment “Send” is pushed.

¹³ Public Notice at p. 1.

reasonable in a wireless environment. Each time a mobile phone user initiates a call on a wireless network, that user is using system capacity and radio frequencies, as well as system hardware and software. The operation of this hardware and software is necessitated by a wireless phone call, whether or not the called party ultimately answers that call. Moreover, the use of radio frequencies – a scarce resource assigned to each wireless carrier by the Commission – has significant opportunity costs associated with it, particularly in congested, urban markets, because no other user can access that voice path at the same time.

Nonetheless, whether a carrier should bill for such calls, *i.e.*, calls that ultimately are not answered or otherwise not completed, should be left to the marketplace. Carriers have a reasonable basis for deciding to cover their costs of transmitting those calls on their networks; in a competitive marketplace, they have the flexibility to differentiate their product and service by choosing whether or not to charge for those calls. Nextel, for example, does not impose airtime charges on its customers when they make a call that is not answered by the called party. In fact, Nextel currently does not charge a customer for completed (*i.e.*, answered) calls that last only two seconds or less. Nextel's system automatically eliminates these calls from the customer's monthly charges based on Nextel's assumption that such a call likely was "dropped" by the system and, therefore, that the user should not be charged.

Nextel's decision to forego cost recovery of the expenses incurred in initiating a customer's call, transmitting that call and attempting to complete that call is a reaction to the competitive forces at work in the CMRS marketplace. If a wireless consumer desires to pay only for his or her calls that are connected or answered, the competitive CMRS marketplace provides that consumer the opportunity to choose among differing billing arrangements offered by the three, four or five wireless providers in his or her market.

Charging Starting with "Send." The Commission also seeks comment on whether it is just and reasonable for carriers to charge their customers airtime beginning with the moment the customer presses the "Send" button. For the same reasons described above, there is a reasonable basis upon which carriers may base their decision to charge for this airtime: the costs of running the network and processing that phone call. From the moment the customer depresses "Send," the carrier's system is performing functions for the customer that allow for the transmission and ultimate completion of that call.

Nonetheless, in the competitive CMRS marketplace, not every carrier will necessarily charge customers airtime beginning the moment "Send" is pushed. Nextel, for example, has implemented a policy by which a customer is charged airtime from the moment "Send" is pushed *only if* the call ultimately is completed. For example, if a Nextel subscriber pushes "Send,"

the phone rings for five seconds but no one answers prior to the Nextel subscriber hanging up the call, Nextel will not impose any charge on that customer. Similarly, if a Nextel customer depresses "Send" and nothing happens, *i.e.*, the call does not even ring, the Nextel customer incurs no charge for that call. On the other hand, if that same Nextel subscriber pushes "Send" and the phone rings for five seconds prior to being answered by the called party, Nextel will charge the subscriber for the entire time period back to pushing the "Send" key. Thus, if the subscriber talks to the called party for 70 seconds, Nextel will charge the customer for 75 seconds (adding in the five seconds of ringing time).

Although Nextel is incurring costs whether its subscriber's phone call is answered or not, Nextel has made the decision to charge only for completed calls. This decision is based on numerous competitive and marketing factors and further differentiates Nextel's services from those of its competitors. This is the type of marketplace decision in a competitive environment that makes detailed regulation unnecessary.

Rounding to the Minute. As GTE stated in its Opposition to the Petition for Declaratory Ruling,¹⁴ the Commission already has concluded that a wireless carrier's decision to round customers' bills to the minute is just

¹⁴ Opposition of GTE Corporation, GTE Wireless Incorporated, GTE Wireless of the South Incorporated, GTE Mobilnet of Tampa Incorporated, GTE Wireless of Houston Incorporated, GTE Mobilnet of Cleveland Incorporated, and GTE Mobilnet of the Southwest Incorporated, filed February 10, 2000, in WT Docket No. 00-164 ("GTE Opposition").

and reasonable.¹⁵ In its November 1999 Memorandum Opinion and Order on Southwestern Bell Mobile Systems, Inc. ("SBMS"), the Commission found that rounding up to the minute was a common industry practice not only in the CMRS industry, but also in the interexchange industry.¹⁶ This practice, the Commission concluded, is "clearly among those which CMRS providers, consistent with Section 201(b) of the Act, have discretion to implement for their services."¹⁷

In light of the Commission's previous finding that rounding is a just and reasonable practice within the carriers' discretion, Nextel asserts that the Petition for Declaratory Ruling is moot. The Commission previously resolved the issue, and a number of carriers have exercised their discretion to round customers' airtime charges to the nearest minute. Nextel, however, rounds up to the minute only on the first minute of the customer's call. All airtime after the first minute is rounded to the nearest second. As stated above, this decision is indicative of the choices consumers have in the wireless marketplace, and the competitive billing and pricing alternatives that are available to them.

For these reasons, the Commission should dismiss the Petition and allow the marketplace to determine the most effective and efficient billing

¹⁵ *Id.* at pp. 6-9.

¹⁶ SBMS Order at paras. 13-14.

¹⁷ *Id.* at para. 14.


practices for CMRS carriers. Any attempt to intervene will inject unnecessary regulation into a properly functioning competitive marketplace.

IV. CONCLUSION

For the reasons described herein, the Commission should dismiss the Petition and allow the marketplace to determine the appropriate billing and pricing practices of CMRS carriers.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By, 

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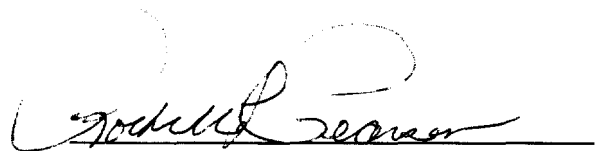
Date: October 20, 2000

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 20th day of October, 2000,
caused a copy of the attached Comments of Nextel Communications, Inc., to be
served by hand delivery to the following:

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A handwritten signature in black ink, appearing to read "Rochelle L. Pearson", is written over a horizontal line.

Rochelle L. Pearson